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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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10/646,477

08/22/2003

Robert H. Stock

33430/US

9313

7590

10/05/2007

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EXAMINER

EBRAHIM, NABILA G

ART UNIT

PAPER NUMBER

1618

MAIL DATE

DELIVERY MODE

10/05/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                                      |                                      |  |
|------------------------------|--------------------------------------|--------------------------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/646,477 | <b>Applicant(s)</b><br>STOCK, ROBERT |  |
|                              | <b>Examiner</b><br>Nabila G. Ebrahim | <b>Art Unit</b><br>1618              |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.  
4a) Of the above claim(s) 25-36 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>12/13/2004, and 08/22/2003</u> . | 6) <input type="checkbox"/> Other: ____  |

### **DETAILED ACTION**

Receipt is acknowledged of Information Disclosure Statements dated 08/22/2003 and 12/13/2004.

#### ***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-24, drawn to a method of forming a nutritional food product, the composition of the product and method of its administration to livestock classified in class 424, subclass 442+.
  - II. Claims 25-36, drawn to A set of packaged supplements for regimented administration to a livestock animal, the set comprising: a plurality of packaged base supplements; at least one packaged special supplement; and a container adapted to hold said plurality of base supplements and said at least one special supplement, wherein the total number of supplements held within the container corresponds to the number of supplements to be administered during a predetermined administration period, classified in class 119, subclass 210.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of

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using that product. See MPEP § 806.05(h). In the instant case the process for using the set of packages can be practiced by any other animal feed such as soy based protein supplements and feeds.

3. Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required because the inventions require a different field of search (see MPEP § 808.02), restriction for examination purposes as indicated is proper.

4. During a telephone conversation with attorney Johnson wade on 9/28/07 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-24. Affirmation of this election must be made by applicant in replying to this Office action. Claims 25-36 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. the claim recites "a method of forming a nutritional food product", the claims do not specify if it is for humans or livestock, a clarification is required.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 8, and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by McKenzie US 3961081 (McKenzie).

McKenzie teaches a continuous process for the production of animal feed supplements. The process includes continuous preparation of a preblend including molasses and vegetable fat, followed by continuous cooking of the preblend in an elongated cooking zone. The cooked preblend is then continuously treated for removal of moisture and partial cooling thereof, whereupon dry ingredients (e.g., vitamins and protein sources) are added and the resulting feed supplement is continuously cooled and packaged. McKenzie also discloses delivering the composition into a metering device (col. 4, lines 9+) and discloses that the moisture percentage in the feed was reduced to below 5% (col. 6, lines 7+), this amount is within the amount disclosed by the current application of less than 8% in claim 8. Claim 15 is not a limiting claim since the steps of the method of administration are conclusive to any administering method having the steps of 1) selecting the animal; 2) determining one characteristic of the animal such as species, breed gender; 3) selecting the packaged food to be administered; 4) removing the feed from its container; 5) and providing it to the animal.

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These steps are logical steps to administer a feed to any animal and do not limit the claims by any means.

Accordingly, Claims 1, 8, and 15 are anticipated by McKenzie.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over McKenzie US 3961081 in view of Kline US 3918502 (Kline) and further in view of Berta US 4820524 (Berta).

McKenzie was discussed above. In addition, it is noted that claims 2-6 describe the tray wherein the tray has a top opening, sidewalls and a ridge, which are regular characteristics of most trays. In addition, the shape of the tray does not seem as of

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essential importance absent data to show that the specific shape of the tray disclosed is critical to the invention.

McKenzie did not disclose the material from which the container used in the method recited is made of.

Kline teaches a container for animal feed (title) wherein the container can be made of different materials such as polyethylene and polystyrene (col. 3, lines 36-38). Accordingly, the claims would have been obvious because a person of ordinary skill has good reason to pursue the known options within his technical grasp, it is likely the product not of innovation but of ordinary skill and common sense.

The two references do not disclose the removable moisture barrier coating.

Berta teaches that it has been discovered that absorption of the moisture in the composition may be reduced by applying a conventional precoat sealant (moisture barrier) (col. 10, lines 47+). It is noted that a foil wrap is a conventional wrapping method to avoid moisture generally in foods industry.

Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to cover the container with a foil wrap as a moisture barrier and affix it to the rim to avoid moisture because moisture has disadvantageous effects on the highly viscous animal-feed.

### ***Correspondence***


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nabila G. Ebrahim whose telephone number is 571-272-8151. The examiner can normally be reached on 8:00AM-5:00PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hartley can be reached on 571-272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Nabila Ebrahim  
9/24/07



MICHAEL G. HARTLEY  
SUPERVISORY PATENT EXAMINER